TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted] 1918

No. [redacted] 141

ANNA D. MATTERS, APPELLANT,

vs.

MARGARET RYAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 24, 1917.

(25,787)

(25,787)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 957.

ANNA D. MATTERS, APPELLANT,

vs.

MARGARET RYAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print
Caption	a	1
Petition for *habeas corpus*	3	2
Order for writ of *habeas corpus*, &c.	7	4
Writ of *habeas corpus* and marshal's return	9	4
Return to writ of *habeas corpus*	12	5
Judgment	14	6
Petition for appeal	15	7
Assignment of errors	17	8
Order allowing appeal	19	9
Bond on appeal	22	9
Praecipe for record	23	10
Clerk's certificate	25	11
Citation and service	26	12

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 26, 1917.

a Supreme Court

ANNA D. MATTERS

vs.

MARGARET RYAN.

Habeas Corpus.

K. M. Landis, District Judge.

Appeal from District Court, Northern District of Illinois, upon Question of Jurisdiction Alone.

Tenney, Harding & Sherman, 137 So. La Salle Street, Chicago, Attorneys for Appellant.

b In the District Court of the United States for the Northern District of Illinois, Eastern Division.

32407.

MARGARET RYAN

vs.

ANNA D. MATTERS.

Mr. Francis E. Hinckley, Attorney for Petitioner.
Messrs. Tenney, Harding & Sherman, Attorneys for Respondent.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, Begun and Held at the United States Court-room, in the City of Chicago, in said District and Division, Before the Hon. Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on Friday, the twenty-eighth day of July, Being One of the Days of the July Term of said Court, Begun Monday, the Third Day thereof, in the Year of Our Lord One Thousand Nine Hundred and Sixteen, and of the Independence of the United States of America the One Hundred and Forty-first Year.

Present: Honorable Kenesaw M. Landis, District Judge, Presiding; John J. Bradley, United States Marshal for said District, and T. C. MacMillan, Clerk of said Court.

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

32407.

MARGARET RYAN

vs.

ANNA DOLLIE LEDGERWOOD MATTERS.

Be it remembered, That heretofore to-wit: on the twentieth day of May, 1916, came the petitioner in the above entitled cause by her attorney, and filed in the clerk's office of said Court, a certain Petition for Habeas Corpus. Said Petition is in the words and figures following to-wit:

3 *Petition for Habeas Corpus.*

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

To the Honorable Kenesaw M. Landis, Judge of said Court:

Your petitioner, Margaret Ryan, of Ottawa, in the Dominion of Canada, complaining, respectfully shows unto your Honor that Irean Ryan, aged about ten (10) months, the daughter of your petitioner, is restrained of her liberty by Anna Dollie Ledgerwood Matters, a resident of Chicago, Illinois, in said District contrary to the laws of the United States.

Your petitioner further shows unto your Honor that the said Irean was born to your petitioner on the 24th day of July, A. D. 1915, in the Misericordia Hospital, in Ottawa, Canada, and that the said child and your petitioner are both aliens and subjects of his Majesty, King George V; that on or about the date of the birth of the said

4 Irean to your petitioner, the said Anna Dollie Ledgerwood Matters, respondent, abducted and kidnapped from your petitioner the said child, and secreted the said child in Ottawa until about the 13th day of August, A. D. 1915, that on or about the 13th day of August, A. D. 1915, the said Anna Dollie Ledgerwood Matters pretending that the said Irean was her own child, did unlawfully transport the said Irean from Ottawa, in the Dominion of Canada, to Chicago, Illinois, in this district, by way of the Grand Trunk Railway, and now holds the said Irean contrary to law.

Your petitioner further shows unto your Honor that at the time of the acts above complained of, and at the present time, there was and is in full force and effect a law of the United States, known as

the Immigration Act of February 20th, 1907, 34 Statutes at large, 898; that Section 2 of said Act provides among other things the following:

"Section 2. The following classes shall be excluded—All children under 16 years of age, unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor, or under such regulations as he may from time to time prescribe."

5 Your petitioner further shows unto your Honor that at the time the said Irean was brought to the United States of America as aforesaid, she was under age of 16 years and was unaccompanied by either one or both of her parents; that no request was made by any person for permission of the Secretary of Commerce and Labor, nor any effort to comply with the regulations prescribed by him for the immigration of aliens.

Your petitioner further shows unto your Honor that under and by virtue of the laws of the United States of America, to-wit: the Judicial Code of the United States, in force January 1st, 1912, District Courts of the United States have original jurisdiction of all suits and proceedings arising under any law regulating the immigration of aliens.

Your petitioner further shows that she has the right to the custody of her said child, and that she desires to have the custody of her said child and desires to return with her said child to her residence in Ottawa, in the Dominion of Canada.

Your petitioner further shows that the person in whose behalf this writ is applied for is not restrained by virtue of process by any court or judge of the United States in a case where such court or judge has exclusive jurisdiction, or by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree, or for any treason, felony, or other crime committed in any other state or territory of the United States for which such person ought by the Constitution and laws of the United States to be delivered up to the executive power of such state or territory.

6 Your petitioner therefore prays a writ of habeas corpus, pursuant to law, to be directed to the said Anna Dollie Ledgerwood Matters, commmanding her to bring the body of the said Irean Ryan, by whatever name or designation the said child may be known, before the Court here, to show the cause of her detention, and to do, submit to and receive what the law may require.

MARGARET RYAN,
Petitioner.

FRANCIS E. HINCKLEY,
Attorney for Petitioner.

STATE OF ILLINOIS,
County of Cook, ss:

Margaret Ryan, the petitioner in the foregoing petition named, makes oath and says that the matters and things in the said petition

contained are true to the best of her knowledge, information and belief.

MARGARET RYAN.

Subscribed and sworn to before me this 16th day of May, 1916.

[SEAL.] O. J. CHOTT,
Notary Public.

(Endorsed:) Filed May 20, 1916. T. C. MacMillan, Clerk.

7 And on to-wit, the twentieth day of May, 1916, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

32407.

MARGARET RYAN

vs.

ANNA DOLLIE LEDGERWOOD MATTERS.

Upon motion of the petitioner herein by her attorney, leave is hereby granted said petitioner to sue as a poor person.

Thereupon said petitioner moves the court for the issuance of a Writ of Habeas Corpus.

It is ordered by the Court that a Writ of Habeas Corpus issue forthwith returnable Friday, May 26, at ten o'clock A. M.

It is further ordered that supœnas issue for certain witnesess to appear and testify on that date.

8 And on the same day to-wit: the twentieth day of May, 1916, a Writ of Habeas Corpus, issued out of the clerk's office of said Court, directed to the marshal of said district to execute. Said Writ of Habeas Corpus, together with the return of the marshal thereon endorsed is in the words and figures following to-wit:

9 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

The United States of America to Anna Dollie Ledgerwood Matters, Greeting:

You are hereby commanded to have the body of Irean Ryan, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Irean Ryan, shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, on Friday, May 26, 1916, at ten o'clock A. M., to be

dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, Judge of said Court, at Chicago, aforesaid, this 20th day of May in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the 140th.

[SEAL.] T. C. MACMILLAN, *Clerk.*
——— ———, *Deputy Clerk.*

10 (Endorsed on the back:) Original. Gen. No. 32407. 13124. "By the Habeas Corpus Act." District Court of the United States, Northern District of Illinois, Eastern Division. In the Matter of the Petition of Margaret Ryan for a Writ of Habeas Corpus. Poor Person. Writ of Habeas Corpus. Returnable May 26, 1916. T. C. MacMillan, Clerk. Francis E. Hinckley, Att'y for Petitioner.

I have served this writ within my district in the following manner to-wit: upon the within named Anna Dollie Ledgerwood Matters by reading the same to and within her presence and hearing, and at the same time delivering to her a true copy thereof, at Chicago, Illinois, this 22nd day of May, A. D. 1916.

JOHN J. BRADLEY,
U. S. Marshal,
By P. J. GALLIGAN, *Deputy.*

Filed May 23, 1916. T. C. MacMillan, Clerk.

11 And on to-wit: the thirty-first day of May, 1916, there was filed in the clerk's office of said court in said entitled cause a certain Return to Writ of Habeas Corpus in words and figures following to-wit:

12 *Return to Writ of Habeas Corpus.*

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

#32407. Habeas Corpus.

MARGARET RYAN

vs.

ANNA DOLLIE LEDGERWOOD MATTERS.

Return of Anna Dollie Ledgerwood Matters to Writ of Habeas Corpus.

I, Anna Dollie Ledgerwood Matters, to whom the within writ is directed, have the body of Irene Matters, my daughter, whom I

believe to be the person erroneously referred to in the said writ as Irean Ryan, but who is not Irean Ryan daughter of Margaret Ryan, now before the Court here. And I do give the Court to be informed and do certify that if the said Irene Matters is not the person referred to in said writ, then I have not at the present tim nor have I had at any time before or after the issuance of the within writ, the custody or control of the person described in said writ, as the said Irean Ryan.

And I do hereby certify and give the Court to be informed that the cause of the detention by me of the said Irene Matters so produced here in Court as aforesaid is as follows:

(1) That the said Irene Matters is my daughter, is an infant of the age of ten (10) months; and that I am entitled to the exclusive care, custody and control of the said child.

(2) That the said Irene Matters, is not the daughter of Margaret Ryan the petitioner herein; and is not an alien, and is not a subject of King George V; and was not abducted or kidnapped; and was not unlawfully transported from the Dominion of Canada, to
13 Chicago, Illinois, as in and by the application or petition in this case alleged.

(3) That the petitioner, Margaret Ryan, is not entitled to the care, custody and control of the said child.

(4) That upon the face of the application or petition herein, it appears that this Court is without jurisdiction to issue the writ in this cause or to hear and determine the facts of the case touching the right to the care, custody and control of the said child.

Dated Chicago, May 31st, 1916.

ANNA D. MATTERS,
Respondent.

JOSEPH R. BURRES,
Attorney for Respondent.

(Endorsed:) Filed May 31, 1916. T. C. MacMillan, Clerk.

14 And on to-wit: the twenty-eighth day of July, 1916, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

32407.

MARGARET RYAN

vs.

ANNA D. MATTERS.

Now come the parties in their own proper persons and by their attorneys and the further hearing of this cause is resumed. And the court having considered and being now fully advised in the premises sustains said petition and finds that Margaret Ryan is the mother of the baby Irean Ryan;

It is therefore ordered by the Court that Anna Dollie Ledgerwood Matters, the respondent herein deliver the child Irean Ryan, into the custody of her mother, Margaret Ryan.

15 And on to-wit: the twenty-fifth day of January, 1917, came Anna D. Matters, by her attorney and filed in the clerk's office of said court in said entitled cause, her petition for appeal, in words and figures following to-wit:

Petition for Appeal.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 32407. Habeas Corpus.

MARGARET RYAN
vs.
ANNA D. MATTERS.

Petition of Anna D. Matters for Allowance of Appeal.

To the Honorable Kenesaw M. Landis, Judge of said Court:

Your petitioner, Anna D. Matters, the defendant herein, respectfully presents this her petition for the entry of an order allowing an appeal from the judgment and order of this court, and shows:

That on the 28th day of July, A. D. 1916, there was entered by your Honor, in the above entitled cause, the final order and judgment of this court herein; that said final order and judgment is an appealable order of this Honorable Court.

16 Your petitioner desires to take an appeal from said order to the Supreme Court of the United States, as is in such cases allowable under the statutes of the United States, upon the question of the jurisdiction of this Honorable Court to hear the above entitled cause and to enter said order of July 28th, 1916, and any other order in said cause.

Your petitioner presents herewith her assignment of errors upon said appeal, in accordance with law.

Wherefore your petitioner respectfully prays that this Honorable Court may enter an order allowing an appeal to be taken by your petitioner from the order of this court of July 28th, 1916, to and into the Supreme Court of the United States of America, as by law provided.

ANNA D. MATTERS,
Defendant Herein.

(Endorsed:) Filed Jan. 25, 1917. T. C. MacMillan, Clerk.

17 And on the same day to-wit: the twenty-fifth day of January, 1917, came Anna D. Matters, by her attorneys and filed in the clerk's office of said court in said entitled cause, her certain assignment of errors in words and figures following to-wit:

Assignment of Errors.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

32407. Habeas Corpus.

MARGARET RYAN

vs.

ANNA D. MATTERS.

Assignment of Errors.

Now comes the defendant and appellant herein, by Tenney, Harding & Sherman, her attorneys, and in connection with her petition for an appeal herein, says that in the record and proceedings of the above entitled cause in said District Court, error has intervened to her prejudice, and said defendant here assigns the following errors, to-wit:

18 (1) The District Court erred in assuming jurisdiction to issue a writ of Habeas Corpus herein.

(2) The District Court erred in assuming jurisdiction to hear and determine the above entitled cause.

(3) The District Court erred in entering the final order and judgment of July 28th, 1916, herein, because said District Court for the Northern District of Illinois was and is wholly without jurisdiction herein.

Wherefore, the said Anna D. Matters, by reason of the errors aforesaid, prays that the said judgment may be reversed and held for naught.

TENNEY, HARDING AND SHERMAN,
Attorneys for Defendant.

(Endorsed:) Filed Jan. 25, 1917. T. C. MacMillan, Clerk.

19 And on the same day to-wit, the twenty-fifth day of January, 1917, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

32407.

MARGARET RYAN

vs.

ANNA D. MATTERS.

This cause coming on this day to be heard upon the petition of Anna D. Matters, defendant herein, and upon proper notice Francis E. Hinckley, attorney for the plaintiff herein, and it appearing that said defendant desires to take an appeal from the final judgment of this court herein to the Supreme Court of the United States, upon the question of the jurisdiction of the District Court for the Northern District of Illinois to hear and determine said cause, and said petition for appeal being accompanied by defendant's assignment of errors, and it appearing that the same is in accordance with law,

It is therefore ordered, adjudged and decreed that the prayer of the defendant, Anna D. Matters, for an appeal from the judgment of this court to the Supreme Court of the United States, be, and the same is hereby allowed, upon said defendant filing a bond for costs in the sum of $250.00 within five days.

20 It is further ordered that a citation issue to the plaintiff, Margaret Ryan, herein, returnable in thirty days, and it appearing to the court that she is a non-resident it is ordered that service of the same be upon her attorney of record, Francis E. Hinckley of this bar.

K. M. L., *Judge.*

21 And on the same day to-wit: the twenty-fifth day of January, 1917, there was filed in the clerk's office of said court in said entitled cause, a certain Bond on Appeal in words and figures following to-wit:

22 Know all Men by these Presents, That we, Anna D. Matters of Chicago, Cook County, Illinois, as principal, and William C. Brown, of Chicago, Cook County, Illinois, as surety, are held and firmly bound unto Margaret Ryan, in the full and just sum of two hundred fifty dollars, to be paid to the said Margaret Ryan, her attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 25th day of January in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, in a suit pending in said Court, between Margaret Ryan, plaintiff, and Anna D. Matters, defendant, judgment was rendered against the said Anna D. Matters and the said Anna D. Matters having obtained from said Court an order allowing an appeal to the United States Supreme Court, and filed a copy thereof in the Clerk's Office of the said Court to reverse

the decree of the aforesaid suit, and a citation directed to the said Margaret Ryan citing and admonishing her to be and appear at the United States Supreme Court, to be holden at Washington, D. C., within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Anna D. Matters shall prosecute her said appeal to effect, and shall answer all damages and costs that may be awarded against her if she fail to make her plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ANNA D. MATTERS. [SEAL.]
WILLIAM C. BROWN. [SEAL.]

Sealed and delivered in presence of—
——— ———.
——— ———.

Approved by—
K. M. L.

(Endorsed:) Filed Jan., 25, 1917. T. C. MacMillan, Clerk.

23 *Pracipe for Record and Proof of Service Thereof.*

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 32407. Habeas Corpus.

MARGARET RYAN

vs.

ANNA D. MATTERS.

Pracipe for Record and Proof of Service Thereof.

To T. C. MacMillan, Clerk of the District Court:

You will please prepare a transcript of the record in the above entitled cause, upon an appeal to the Supreme Court of the United States heretofore allowed, upon the question of jurisdiction alone, and include therein the following portions of the record.

(1) Petition for writ of Habeas Corpus, filed herein on May 20th, 1916.

(2) Order directing writ to issue entered May 20th, 1916.

(3) Writ of Habeas Corpus and return of Marshal thereon, filed May 23rd, 1916.

(4) Return to the writ filed May 31st, 1916.

(5) Final Order and Judgment of District Court, entered July 28th, 1916.
(6) Petition for appeal.
(7) Order allowing appeal.
(8) Assignment of Errors.
(9) Appeal Bond.
(10) Citation.
(11) Praecipe for transcript of record.

TENNEY, HARDING & SHERMAN,
Attorneys for Appellant.

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Barney Lenit, being first duly sworn, on oath deposes and says, that on the 14th day of February, 1917, he served the within praecipe for record, upon Francis E. Hinckley, the attorney for plaintiff and appellee, Margaret Ryan, by leaving a true copy thereof with Anna E. Kelleher, a person at and in charge of the office of said Francis E. Hinckley, in said division and district.

BARNEY LENIT.

Subscribed and sworn to before me this 14th day of February, 1917.

[SEAL.] MARGARET A. CURTIN,
Notary Public, Cook County, Illinois.

(Endorsed:) Filed Feb. 14, 1917. T. C. MacMillan, Clerk.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing, to be a true and complete transcript of the proceedings had of record in said Court, made in accordance with Praecipe filed in the cause entitled, Margaret Ryan vs. Anna D. Matters, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District and Division, this twenty-third day of February, 1917.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN, *Clerk.*

26 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Margaret Ryan, Greeting:

You are hereby cited and admonished to be and appear at The Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Anna D. Matters is appellant and you are appellee, to show cause, if any there be, why the Judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kenesaw M. Landis, Judge of the District Court of the United States this — day of January, in the year of our Lord one thousand nine hundred and seventeen.

K. M. L.

27 I, Francis E. Hinckley, attorney for plaintiff herein, hereby accept service of the within citation on her behalf this 25th day of January, A. D. 1917, as per Order of Court.

FRANCIS E. HINCKLEY.
[Illegible.]

[Endorsed:] No. 32407. United States Circuit Court of Appeals, Seventh Circuit. Margaret Ryan vs. Anna D. Matters. Citation. Returnable Feb. 24, 1917. T. C. MacMillan, Clerk. Filed Feb. 20, 1917, at — o'clock — M. T. C. MacMillan, clerk.

Endorsed on cover: File No. 25,787. N. Illinois D. C. U. S. Term No. 957. Anna D. Matters, appellant, vs. Margaret Ryan. Filed February 24, 1917. File No. 25,787.

MAR 12 1918
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 417 141

ANNA D. MATTERS, *Appellant,* vs. MARGARET RYAN, *Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Hon. Kenesaw M. Landis, Judge, Presiding.

BRIEF AND ARGUMENT FOR APPELLANT.

HORACE KENT TENNEY,
ROGER SHERMAN,
HARRY A. PARKIN,
Attorneys for Appellant.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

INDEX.

Subject Index.

	Page
Argument	6
Brief of argument	5
Judgment appealed from	3
Objection to jurisdiction	3
Specification of errors relied upon	4
Statement of case	1

List of Cases and Statutes Cited.

Barry, *In re*, 2 How., 65	10
Burrus, *In re*, 136 U. S., 586	6
Bell, *In re*, 240 Fed., 758	8
Carfer v. Caldwell, 200 U. E., 293	6
Immigration Act, 1907, Sec. 20	9
Judicial Code, Sec. 24, Paragraph 22	2, 11
Simms v. Simms, 175 U. S., 162	8
Zakonite v. Wolf, 226 U. S., 272	10

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 417

ANNA D. MATTERS, *Appellant,* vs. MARGARET RYAN, *Appellee.*	Appeal from the District Court of the United States for the Northern District of Illinois, Hon. Kenesaw M. Landis, Judge, Presiding.

STATEMENT OF THE CASE.

This is an appeal, solely on the question of jurisdiction, (Rec., 7-9) from a final judgment of the District Court for the Northern District of Illinois in a *habeas corpus* proceeding which took from appellant the custody of a minor child and awarded it to appellee.

Appellee filed her petition for *habeas corpus,* alleging that *she was the mother of a child named Irean,* ten months old, who was "restrained of her liberty" by appellant; that both appellee and the infant were subjects of his Majesty, King George V.; that on or about the date of the birth of the child appellant "abducted and kidnaped from your petitioner the said child in Ottawa until about the 13th day of August, A. D.

1915"; that on or about the 17th day of August, A. D. 1915, *appellant, pretending that the said child was her own child,* "did unlawfully transport the said Irean from Ottawa in the Dominion of Canada, to Chicago, Illinois, in this district by way of the Grand Trunk Railroad, and now holds the said Irean contrary to law." (Rec., 2.)

Section 2 of the Immigration Act of February 20, 1907, which provides for the exclusion of all children under 16 years of age unaccompanied by one or both of their parents, was quoted, and the petition charged that the infant child was brought to the United States in violation of said section. (Rec., 3.)

The petition further averred that by virtue of the Judicial Code, "District Courts of the United States have original jurisdiction of all suits and proceedings arising under any law regulating the immigration of aliens." (Rec., 3.)

Petitioner then averred that she "has the right to the custody of her child and that she desires to have the custody of her said child, and desires to return with her said child to her residence in Ottawa, in the Dominion of Canada." (Rec., 3.)

The prayer of the petition was that the writ of *habeas corpus* be directed to appellant "commanding her to bring the body of said Irean Ryan, by whatever name or designation the said child may be known, before the court here, to show the cause of her detention, and to do, submit to and receive what the law may require." (Rec., 3.)

The writ issued (Rec., 4) and the respondent to the writ, appellant here, filed an answer. (Rec., 5.) The answer admitted the custody of the child, and asserted that appellant was the mother of the infant and entitled to its custody; denial was made of the kidnaping and the abduction and of the alleged unlawful importation.

The jurisdiction of the court to issue the writ was challenged by appellant in Paragraph 4 of her return to the writ, as follows:

> "(4) That upon the face of the application or petition herein, it appears that this court is without jurisdiction to issue the writ in this cause, or to order and determine the facts of the case touching the right to the care, custody and control of the said child." (Rec., 6.)

Overruling this objection to its jurisdiction, the District Court summarily heard the case and entered the following judgment:

> "Now come the parties in their own proper persons and by their attorneys, and the further hearing of this case is resumed. And the court having considered and being now fully advised in the premises, sustains said petition and finds that Margaret Ryan, is the mother of the baby Irean Ryan;
>
> It is therefore ordered by the court that Anna Dolly Ledgerwood Matters, the respondent herein, deliver the child, Irean Ryan, into the custody of her mother, Margaret Ryan." (Rec., 6-7.)

The above quotation constitutes the judgment in full. No findings were made and there was no reference to the alleged violation of the immigration law upon which it was sought to sustain the jurisdiction of the court.

This appeal from said judgment was prayed and allowed to this court upon the sole ground of the want of jurisdiction of the District Court over the subject matter. (Rec., 7, 9.) The assignments of error and the order allowing the appeal raise only the question of jurisdiction. (Rec., 8, 9.)

The United States was not a party to the proceeding in the District Court, nor was the Secretary of Labor or any other official charged with the enforcement of the immigration laws, and the sole question heard and de-

cided was the parentage of the child and the petitioner's right to its custody.

It was and is the contention of appellant that the District Court upon the face of the petition had no jurisdiction to issue the writ and that every subsequent step taken by the District Court in the cause was wholly without jurisdiction. Appellant relied wholly upon this one ground in the court below, and when her objection to the jurisdiction of the District Court was overruled by that court, took this appeal upon the sole question of jurisdiction.

SPECIFICATION OF ERRORS RELIED UPON.

1. The District Court erred in assuming jurisdiction to issue the writ of *habeas corpus* herein.

2. The District Court erred in assuming jurisdiction to hear and determine the cause.

3. The District Court erred in entering the final judgment because said District Court was and is wholly without jurisdiction.

BRIEF OF ARGUMENT.

I.

FEDERAL COURTS HAVE NO JURISDICTION TO DETERMINE THE CUSTODY OF CHILDREN ON HABEAS CORPUS.

In re Burrus, 136 U. S., 586, 594.
Carfer v. *Caldwell*, 200 U. S., 293, 296.
Simms v. *Simms*, 175 U. S., 162, 167.
Ex parte Bell, 240 Fed., 758.

II.

THE DISTRICT COURT HAD NO JURISDICTION UNDER THE IMMIGRATION ACT OF FEBRUARY 20, 1907, OR BY VIRTUE OF SECTION 24 OF THE JUDICIAL CODE AS ALLEGED.

Secs. 20 & 21 Immigration Act of February 20, 1907.

UNDER SAID ACT THE SECRETARY OF LABOR AND NOT THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS HAD JURISDICTION TO ENTERTAIN A PROPER PROCEEDING TO INQUIRE INTO THE ALLEGED UNLAWFUL IMPORTATION OF THE MINOR CHILD.

THE JURISDICTION OF THE SECRETARY OF LABOR IS EXCLUSIVE.

Zakonite v. *Wolf*, 226 U. S., 272.

ARGUMENT.

I.

FEDERAL COURTS HAVE NO JURISDICTION TO DETERMINE THE CUSTODY OF CHILDREN ON HABEAS CORPUS.

The one purpose of the petition for *habeas corpus* was the determination of the right to the custody of the infant child. The prayer of the petition so states, and the final judgment of the court contains neither finding nor order upon any other question raised or attempted to be raised by the petition. Under these circumstances, it is clear that the District Court had no jurisdiction of the subject matter.

There are a number of decisions of this court all uniformly holding this to be the law.

The leading case, *In re Burrus*, 136 U. S., 586, was an original *habeas corpus* to secure the release of petitioner who was in custody for refusal to comply with an order of the federal court which attempted to determine the question of the right to the custody of a child as between its father and its grandfather. This court in releasing petitioner said, at page 593 of the opinion:

> "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States, nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress, or any treaty of the United States or its constitution."

Carfer v. *Caldwell*, 200 U. S., 293, was a proceeding in *habeas corpus* to determine the power of a committee of the Legislature of West Virginia to attach Caldwell for contempt in refusing to appear in response to a subpoena issued by the committee. This court found the petitioner was not restrained in violation of the constitution or any law of the United States, and reversed the Circuit Court with directions to quash the writ and dismiss the petition. The opinion at page 296 states:

> "The jurisdiction of courts of the United States to issue writs of *habeas corpus* is limited to cases of persons alleged to be restrained of their liberty in violation of the constitution or of some law or treaty of the United States, and cases arising under the law of nations. *In re Burrus*, 136 U. S. 586, 591; *Andrews* v. *Swartz*, 156 U. S. 272, 275; *Storti* v. *Massachusetts*, 183 U. S. 138, 142.
>
> And it did not appear in this case that petitioner was restrained in violation of the constitution or any law or treaty of the United States.
>
> The Circuit Court held that the House of Delegates had no power under the Constitution of West Virginia to appoint a committee for the purpose of investigating the matter set forth in the resolution and to clothe it with power to sit and compel the attendance of witnesses in vacation, but took jurisdiction, nevertheless, on the ground that the condition was so 'extraordinary' as to 'warrant the intervention of the first court, state or federal, applied to.'
>
> This view ignored the settled law that a Circuit Court of the United States has no jurisdiction to issue a writ to release a prisoner from imprisonment by another citizen of the same state merely because the imprisonment is wrongful."

In the instant case, the only allegation respecting imprisonment of the minor child by appellant is that found in the petition which charges that the child was "restrained of her liberty" by appellant. There is no allegation of fact showing that this alleged restraint was in

violation of the constitution or any law or treaty of the United States. On the contrary, the facts pleaded merely disclose a contest over the custody of a child between appellant and appellee, both of whom, as the petition admits, claim to be its mother. As suggested in *Carfer* v. *Caldwell*, *supra*, these facts did not bring the case within the jurisdiction of the District Court.

In *Simms* v. *Simms*, 175 U. S., 162, at page 167, this court in discussing the question of jurisdiction of federal courts to determine domestic relations, said:

> "Within the states of the Union, the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the state, and not to the laws of the United States." (Citing *In re Burrus*, 136 U. S. 586, 593, 594.)

Nor did the alleged diversity of citizenship confer jurisdiction upon the District Court. A similar state of facts arose in *Ex parte Bell*, 240 Fed., 758, between citizens of California and Nevada. The court there refused to entertain the petition, saying:

> "Petitioner contends that the court has jurisdiction, both because of the diverse citizenship of the parties and because it is the duty of the court to 'give full faith and credit to the Nevada decree' (of adoption). Upon neither ground can the jurisdiction of the court be upheld. Petitioner cites no authority in support of her contention, and the principles supporting the contention of respondent are fully set out in *Re Burrus*, 136 U. S. 586, *Clifford* v. *Williams*, 131 Fed. 100, and *Hoadly* v. *Chase*, 126 Fed., 818."

In each of the above cases it was attempted to use the federal courts for purposes identical with that made in the case at bar, and in each of the cases cited, this court denied the jurisdiction of District Courts to entertain *habeas corpus* to determine the right to the custody of children. There is no dissent from the doctrine announced in the above cases.

The jurisdiction of the court in the case at bar was challenged in apt time by the return to the writ and arose at the outset of the case. (Paragraph 4, Return to Writ, Rec., 6.)

The District Court decided it had jurisdiction, heard the case, determined the parentage of the child and *ordered its custody transferred from appellant to appellee.* (Rec., 6.) The action of the District Court whereby it overruled the objection to its jurisdiction and heard the case was clearly error. The final judgment attempted to be entered by the District Court was likewise erroneous because entered in a cause in which the court wrongfully assumed and was wholly without jurisdiction.

II.

THE DISTRICT COURT HAD NO JURISDICTION UNDER THE IMMIGRATION ACT OF FEBRUARY 20, 1907, OR BY VIRTUE OF SECTION 24 OF THE JUDICIAL CODE AS ALLEGED.

The attempt to give substance to the claim of jurisdiction by including in the petition the allegations respecting the alleged unlawful importation of the minor child does not aid an otherwise defective petition, because by Section 20 of the Immigration Act of February 20, 1907, as amended, relied upon in the petition, the deportation of aliens unlawfully imported into the United States rests with the Secretary of Labor, who must issue a warrant for the alien, take the alien into custody and afford a hearing. Section 20 of the Immigration Act provides as follows:

> "Any alien who shall enter the United States in violation of law * * * shall, *upon the warrant of the Secretary of Labor* be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States."

The constitutionality of this Act conferring upon the Secretary of Labor exclusive jurisdiction to deport aliens is upheld by this court in *Zakonite* v. *Wolf*, 226 U. S., 272.

Not only does the allegation of unlawful importation add no strength to the petition, but the procedure by *habeas corpus* was in direct conflict with the proper procedure under the Immigration Act upon which reliance was placed. No attempt whatever was made to procure a warrant from the Secretary of Labor as required in such cases, but it was attempted to bolster up the *habeas corpus* proceeding by injecting the irrelevant reference to the Immigration Act. The Immigration Act clothes the Secretary of Labor and not the District Courts with power to deport aliens alleged to have entered the United States in the manner in which the petition charged the child had entered. District Courts cannot initiate an alien deportation proceeding, either by *habeas corpus* or under the Immigration Act.

The right to the custody of the child did not depend upon the Immigration Act or grow out of the alleged unlawful importation. The real issue pleaded and tried was that set forth in the judgment of the District Court: "that Margaret Ryan is the mother of the baby, Irean Ryan." (Rec., 6.) This certainly was not dependent upon any law of the United States. The possession by appellant was not in violation of the Immigration Act or of the Constitution or any law or treaty of the United States. The whole case presented is, as suggested by this court in a similar proceeding:

> "The case of a private individual, who is an alien, seeking redress for a supposed wrong done him by another private individual who is a citizen * * * and we cannot issue any writ of *habeas corpus*."
> *Ex parte Barry*, 2 How., 65.

It is submitted, therefore, that the lack of jurisdiction of the District Court to determine the custody of the child

was not aided by the attempt to create the impression of jurisdiction by the reference to the alleged unlawful importation of the minor child. The petition not stating a case within the jurisdiction of the District Court on *habeas corpus* was not strengthened by the inclusion therein of the allegation respecting the Immigration Act.

Section 24, Paragraph 22, Judicial Code.

The petition also referred to Section 24, Paragraph 22, Judicial Code, giving District Courts jurisdiction "of all suits and proceedings arising under any law regulating the immigration of aliens." This section has reference to suits testing the validity of deportation, Chinese exclusion and kindred proceedings had before the Secretary of Labor, and clothes the District Courts with power to review but not to initiate such proceedings and to entertain suits for the recovery of penalties and criminal actions for violation of the Act. It is merely a reenactment of Section 13, Act March 3, 1891, 26 Stat., 1086, and does not enlarge or change the jurisdiction of District Courts as it existed prior to the enactment of the Judicial Code. *Habeas corpus* to determine the custody of children within a state is not such a proceeding as is contemplated by Section 24, Judicial Code, is not a "suit or proceeding arising under any law regulating the immigration of aliens," nor does said Section 24 confer original jurisdiction upon District Courts in proceedings to deport aliens alleged to have entered the United States in violation of the Immigration Act.

Having no jurisdiction of the subject matter, and the reference to the Immigration Act of February 20, 1907, and to Section 24, Paragraph 22, Judicial Code, giving no aid to this lack of power to hear the cause, the whole proceeding by the District Court, from the issuance of

the writ to the entry of the final order, was absolutely without jurisdiction, and the order appealed from should be reversed and set aside.

Respectfully submitted,

HORACE KENT TENNEY,
ROGER SHERMAN,
HARRY A. PARKIN,
Attorneys for Appellant.

THE case is stated in the opinion.

Mr. Horace Kent Tenney, *Mr. Roger Sherman* and *Mr. Harry A. Parkin* for appellant.

No appearance for appellee.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

On the 20th of May, 1916, Margaret Ryan, the appellee, alleging herself to be a subject of the King of Great Britain residing in Ottawa, Canada, applied for a writ of habeas corpus to obtain the possession of her alleged minor child, Irean, by taking her from the asserted illegal custody of Anna D. Matters, the appellant, alleged to be a resident of the State of Illinois.

The petition for habeas corpus charged that the said child was born to petitioner ten months before in a hospital in Ottawa, but shortly after the birth of the child she was kidnapped by the respondent, who secreted her until August when she brought the child by railroad journey to Chicago from Ottawa and there illegally detained her. It was charged that the cause of action arose under the law of the United States, in that the Immigration Laws of the United States forbade the bringing of an alien child under sixteen years of age from Canada into the United States without being accompanied by its father or mother, in the absence of permission by the immigration authorities of the United States. An order was entered allowing the prosecution of the habeas corpus proceedings *in forma pauperis*, and the writ issued.

The respondent denied the averments of possession and kidnapping. She alleged that she had a child of her own about ten months of age, and that if such child was the one referred to in the petition for habeas corpus, the

petitioner had no right to the custody of the same. The existence of any right in the petitioner to champion the enforcement of the Immigration Laws of the United States was denied, and the jurisdiction of the court to entertain the controversy was expressly challenged.

On the return, after hearing, jurisdiction was maintained, the return was held insufficient, and the petitioner was decreed to be entitled to the custody of the child and the appellant was commanded to deliver her. This direct appeal on the question of jurisdiction alone was then taken.

It is settled that "the jurisdiction of courts of the United States to issue writs of *habeas corpus* is limited to cases of persons alleged to be restrained of their liberty in violation of the Constitution or of some law or treaty of the United States, and cases arising under the law of nations." *Carfer* v. *Caldwell*, 200 U. S. 293, 296; *In re Burrus*, 136 U. S. 586, 591; *Andrews* v. *Swartz*, 156 U. S. 272, 275; *Storti* v. *Massachusetts*, 183 U. S. 138, 142. It is obvious that on the face of the petition the sole question at issue was the maternity and custody of the child, and as that question was in its nature local and non-federal there was nothing to sustain the jurisdiction unless the averment that the case was governed by the Immigration Laws of the United States had that effect. But when it is observed that the only basis for that assertion rested upon the allegation that the defendant, pretending to be the mother of the infant child, had brought her from Canada into the United States without complying with the administrative requirements of the Immigration Laws, we are of opinion that the case made involved no federal question adequate to sustain the jurisdiction, because of the unsubstantial and frivolous character of the contention made in that respect.

We are constrained to this conclusion since we are unable to perceive the possible basis upon which it can be

assumed that the local question of maternity, and consequent right to custody, which dominated and controlled the whole issue could be transformed and made federal in character by the assertion concerning the Immigration Laws. And this becomes all the more cogent when the absence of power on the part of the petitioner to champion the enforcement of the Immigration Laws is borne in mind.

Whether a case might arise where a court of the United States could take jurisdiction of a petition for habeas corpus upon averment of diversity of citizenship and pecuniary interest, without the assertion of a federal right, does not here arise (a) because the suit was brought exclusively under the assumption that it was governed by the law of the United States which requires a federal question to give jurisdiction, and (b) because, in any event, there is here no averment of jurisdictional amount.

It follows that the decree below must be and it is

Reversed and the case remanded with directions to dismiss the writ of habeas corpus.